to pay $2,000, neither more nor less, and is unenforceable as such, the bond is not void, but remains a valid instrument which is regarded as security for the payment of damages. The interpolation of a third party to hold and pay penal deposits differs in no essential way from the exchange of penal bonds, for, although the third party is a stranger to the original contract, in both instances this latter agreement remains the substance of the transaction. It follows, therefore, notwithstanding the fact that the agreement in the principal case to pay over the penal sum was unenforceable as such, that the deposit remained a source of payment of possible damages.

DESCENT AND DISTRIBUTION — NATURE OF ESCHEAT — WHETHER SUBJECT TO INHERITANCE TAX. — Real and personal property of an intestate without heirs escheated under a statute to the county wherein it was situated. The state sued to collect an inheritance tax under a statute imposing a tax on the transfer of any property "by will or by the intestate laws of this state." *Held*, that the transfer by escheat is subject to the tax. *People* v. *Richardson*, 109 N. E. 1033 (Ill.).

Under a similar statute providing for escheat the Probate Court with statutory powers to distribute intestate estates, decreed that the property of an intestate without known heirs escheated to the defendant county. The plaintiff, claiming as heir, now sues the county to recover the land, alleging that as an escheat was not a form of inheritance, the Probate Court had no jurisdiction. *Held*, that escheat was part of the scheme of distribution, and the Probate court had jurisdiction. *Christianson* v. *County of King*, Sup. Ct. Off., No. 67.

Under the English common law escheat was an incident of feudal tenure. On the failure of heirs or of inheritable blood to the tenant, the tenure was determined, and the land reverted back to the lord, the original grantor. See CO. LITT. 13 *a*; 2 BL. COM. 72, 244; 4 KENT COM. 423. Escheat in its feudal sense still persists in England. See WILLIAMS, REAL PROPERTY, 55. That this feudal escheat should not be subject to an inheritance tax is shown by the analogy that the coming into possession of a vested remainder upon the death of a life tenant is not so taxable. *In re Pell's Estate*, 171 N. Y. 48, 63 N. E. 789. But in the United States escheat in the feudal sense seems not to exist. See 3 WASHBURN, REAL PROPERTY, 6 ed., 61. It is doubtful whether there has been any feudal tenure in this country since the Revolution. See 2 BL. COM., Cooley's ed., 102 n.; 4 KENT COM. 424; 1 WASHBURN, REAL PROPERTY, 5 ed., 39–42. See *contra*, GRAY, RULE AGAINST PERPETUITIES, § 22. In a number of states it has been expressly declared non-existent. See GRAY, RULE AGAINST PERPETUITIES, § 23. The state now succeeds to the estate of the deceased as *ultimus haeres*, by virtue of its sovereignty. See *Matthews* v. *Ward's Lessee*, 10 Gill & J. (Md.) 443, 451. See TIFFANY, REAL PROPERTY, § 458. Under the English common law escheat did not apply to personalty, nor to equitable interests in land; but in the United States it is now almost entirely regulated by statute, and includes the transfer to the state of property rights of every nature. Compare *Burgess* v. *Wheate*, 1 Eden 177, with *Johnston* v. *Spicer*, 107 N. Y. 185, 13 N. E. 753; *Matthews* v. *Ward's Lessee*, *supra*; *Commonwealth* v. *Blanton's Executors*, 2 B. Mon. (Ky.) 393. See STIMSON, AM. ST. LAW, §§ 1151, 1157. It is submitted that escheat in this country is properly included within "the intestate laws," and is therefore subject to the usual form of inheritance tax.

DIVORCE — DEFENSES — VOIDABILITY OF THE MARRIAGE. — The plaintiff brought an action for separation from her husband. The husband, in defense, pleaded facts that showed the marriage to be voidable at his election. *Held*, that this is not a good defense. *Ostro* v. *Ostro*, 155 N. Y. Supp. 681 (App. Div.).

It is axiomatic that a divorce proceeding must be predicated upon the exist-